

## **Cloud Peak (State Tax Notes)**

### **Montana Court: Contract Date Sets Market Value, Law Applies Retroactively**

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A Montana trial court, in *Cloud Peak Energy Resources v. Montana Dep't of Revenue*, has determined that **the date of a contract** is the appropriate point at which to determine the fair market value of coal and that a **2009 statutory amendment retroactively applies to prior tax years.**

The plaintiff brought the case against the Montana DOR in September 2012 after the DOR made its final determination in an audit of tax years 2005-2007. The final determination imputed additional income for the plaintiff from a series of non-arm's-length coal sales between the plaintiff and affiliated companies.

Montana law provides that the DOR may impute as income the difference between a non-arm's-length transaction coal valuation and a fair market valuation. However, the statute does not stipulate when a sale takes place for valuation purposes.

The DOR argued that a sale is finalized when coal is placed onto a train for shipment. The plaintiff argued that a sale occurs when a contract is finalized.

Also, the plaintiff argued that the DOR improperly applied a 2009 statutory amendment that included the cost of additives used to prepare coal for shipment in the FMV of coal. The plaintiff argued that the 2009 amendment was not retroactive and therefore should not increase the imputed income from the sales of coal in tax years 2005 to 2007.

In its October 31 opinion, the court determined that though the DOR properly imputed income, its argument that the FMV of coal should be determined at the time of transport was incorrect. Instead, the court said, the date of contract is a "better metric of market value." The court instructed the DOR to recalculate the market value of the coal in dispute and to assess new interest and penalties on the resulting assessment. The court then determined that though the 2009 amendment did not expressly provide for retroactive application, the legislative history clearly showed that it was meant as a clarification rather than a change. Therefore, the court said, the DOR properly included the cost of additives in the FMV of the coal.

Dan Whyte, deputy chief legal counsel at the DOR, said, "the department is **evaluating the judge's decision to determine what course of action to take.**"

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